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January 23, 2019

Service by ECF

Hon. James Orenstein

U.S. Dist. Ct. EDNY

225 Cadman Plaza East

Brooklyn, NY 11201

Re: *Mulea-DeGonzague v. Kings Autoshow, Inc, et al.*

(Dkt. Not. 18-cv-05630) (DLI)(JO)

Dear Magistrate Orenstein:

This letter is submitted pursuant to your 1/23/19 Order directing defendants to show cause why counsel for defendants should not be disqualified due to the appearance of an actual (nonwaivable) conflict of interest arising from me filing a cross-claim in the Answer on behalf of defendant Ally Financial, Inc. as against defendant Kings Autoshow, Inc. *See* ECF No. 16.

To begin, a full indemnification agreement in favor of Ally is in place that protects Ally from any and all liability in connection with this matter. The indemnification agreement renders the cross-claim unnecessary. I regretfully included the unnecessary cross-claim in the Answer in an abundance of caution.

To be sure, as already admitted by Kings Autoshow in the Answer on file, Ally had nothing to do with the calculation of sales tax in the Lease Agreement that is the gravamen of the federal question presented in this lawsuit. A Rule 12(c) motion will be made shortly to dismiss Ally from the lawsuit. *See, e.g., Kennedy v. BMW Fin. Servs, NA*, 363 F. Supp.2d 110 (Dist. Ct. Conn. 2005) (assignee not liable under CLA where it did not make the erroneous fee calculation and had no reason to know of the error).

Furthermore, I have had zero (none) direct communication with Ally Financial concerning this lawsuit. Rather, Attorney C. Fred Weil and Attorney George C. Fontana (original counsel for Ally) agreed to allow Mr. Weil and myself to litigate on behalf of both defendants (with his oversight) in order to reduce the costs of attorneys' fees to Kings Autoshow (which must pay for Ally's legal fees under the indemnity agreement).

With the Court's permission, defendants propose two possible options: (1) grant defendants' permission to withdraw the superfluous cross-claim to eliminate the appearance of a conflict purportedly created by it; or, (2) grant defendants permission to file an Amended Answer without the cross claim.

Respectfully submitted,

/s/ Richard M. Langone

Cc: C. Fred Weil
(Service by ECF)

George C. Fontana
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